

# How to Dismiss Fairly in 2027

What's changing, what it means for you,  
and what to do right now

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# What we'll cover together

## Why does this matter right now?

The Employment Rights Act and why employers must be already prepared

## Getting the process right

Step by step: investigations, hearings, appeals and beyond

## What is unfair dismissal?

The legal framework and why it matters more than ever

## Awards explained

Polkey reductions, contributory fault and mitigation

## The five fair reasons to dismiss

Understanding each one and when they genuinely apply

## What's changing in 2027?

The qualifying period, probation changes and what to do now

*You'll leave with practical steps you can take straight away before the law changes.*



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How confident do you feel  
about the new changes and  
how they will impact your  
business?

# Why Does This Matter Right Now?

## The biggest change in employment law for a generation, and it's come around fast.

The Employment Rights Act 1996 has shaped how employers dismiss for nearly three decades. The Employment Rights Act has changed the rules. Here's why you can't afford to wait.

### Unfair dismissal rights from six months

From January 2027, employees can bring unfair dismissal claims from six months. Every single hire carries legal risk. **The two-year safety net is gone.**

### Probation is no longer a free pass

Dismissing someone during probation without a proper process will no longer be low-risk. A 9-month statutory period is proposed, but even that requires a reason, a meeting and a right of appeal.

### Tribunal claims are rising

Employment tribunal claims have been climbing year on year. Reducing the qualifying period is expected to significantly increase the volume of unfair dismissal claims, many against employers who simply didn't know the rules had changed.

### Your contracts probably need updating

Most employment contracts still reference the old two-year model. Probationary clauses, notice provisions and disciplinary procedures all need to be reviewed and updated before the changes take effect.

### Managers aren't ready

Most line managers have no idea what a fair dismissal process looks like. With changes in motion, the time to train and upskill your people managers is now, not after your first tribunal letter.

### The cost of getting it wrong is real

An unfair dismissal award can be up to £123,543 but is uncapped after January 2027. Add legal costs, management time and reputational damage and the bill is far higher. Prevention through preparation is always cheaper than a tribunal.

*Organisations that prepare now will find these changes manageable. Those that don't will find them very expensive.*

# What is Unfair Dismissal?

The legal framework



# Understanding the legal framework

## The legal foundation

Under the Employment Rights Act 1996, an employee has the right not to be unfairly dismissed.

To succeed in an unfair dismissal claim, an employee must show:

- They were actually dismissed
- They have the required qualifying service
- The dismissal was for an unfair reason or as a result of an unfair process

Currently, employees need two years' continuous employment to bring a claim. From January 2027, this reduces to six months.

~25,000+

unfair dismissal claims brought to Tribunal each year in the UK

## Two-stage test

**Tribunals ask: was the reason fair? And did the employer act reasonably and fairly in the process?**

## Costs matter

The basic and compensatory award together can be up to £123,543, from **January 2027, there will be no cap.**

# The Five Fair Reasons

When the law says dismissal can be justified, and what you need to prove

# The five potentially fair reasons for dismissal

Section 98 of the Employment Rights Act 1996 sets out the only valid reasons for dismissal. A reason outside this list will almost always mean unfair dismissal.

## 01 Capability

Performance or health-related inability to do the job. You must usually follow a performance management or ill health process first, with support and clear targets.

## 02 Conduct

Disciplinary matters including misconduct or gross misconduct. The key is following a fair investigation and disciplinary process before any decision is made.

## 03 Redundancy

Genuine reduction in need for a role. The pool, selection criteria and consultation process all matter enormously. Cut corners here and the claim almost writes itself.

## 04 Statutory Illegality

Where continuing employment would breach a legal restriction, for example, a driver who loses their licence or a worker who no longer has the right to work in the UK.

## 05 Some Other Substantial Reason (SOSR)

A catch-all for genuinely significant business reasons, reorganisation, end of fixed-term contracts, or a personality clash that makes employment untenable. Used carefully.

# Getting the Process Right

Because how you dismiss matters just as much as why you dismiss

# A fair process: the essential steps

The Employment Tribunal will scrutinise your process. Each step builds the foundation for a defensible outcome.

## 1 Investigation

Investigate thoroughly before any formal action. Gather evidence, speak to witnesses, keep notes. The investigation should be proportionate to the seriousness of the issue.

## 2 Written invitation

Invite the employee to a disciplinary or capability hearing in writing. Give them reasonable notice (usually 5 working days), explain the allegations and their right to be accompanied.

## 3 The hearing

Give the employee a genuine opportunity to respond. Listen. Don't reach a conclusion before you've heard them out. Document the hearing carefully.

## 4 Decision and outcome letter

Communicate the outcome clearly and promptly in writing. If dismissal, explain the reason, the effective date and the right of appeal. Avoid vague language.

## 5 The appeal

Always offer a right of appeal. The appeal should be heard by someone not previously involved. It is a fresh consideration, not a rubber stamp of the original outcome.

# Things that trip employers up and how to avoid them

## Pre-judging the outcome

If a manager says 'we need to get rid of them' before the process starts, that's a problem. The decision must be made after the hearing, not before it.

## Ignoring the right to be accompanied

Employees have a statutory right to be accompanied to disciplinary and grievance hearings by a colleague or trade union rep. Don't overlook or rush this.

## No suspension policy

Suspension should never be automatic. It should be paid, as brief as possible, and only used where necessary (e.g. risk of evidence tampering or repeat conduct).

## Skipping the investigation

Going straight to a disciplinary hearing without proper investigation is one of the most common reasons employers lose tribunal claims. It's rarely excusable.

## Dismissing without warnings

Except in cases of significant misconduct, dismissal without prior warnings will usually be unfair. Keep a clear trail of managed performance or conduct concerns.

## Poor record keeping

If it's not written down, it didn't happen that's how tribunals see it. Good notes, letters and records are your best defence in any dispute.

# Consistency in Decisions & Why It Matters

## The core principle:

Like cases must be treated alike.

If one employee keeps their job under the same facts, dismissing another is hard to defend.



### Unfair Dismissal Risk

Inconsistency is one of the most common reasons tribunals find a dismissal unfair.



#### Employee A - same conduct

Given a warning. Keeps their job.



#### Employee B - same conduct

Dismissed. Tribunal will ask why.



### When Differences Are Justified

*Inconsistency isn't fatal if you can show a genuine reason for treating cases differently.*

- Employee A had a clean disciplinary record; Employee B had prior warnings
- Materially different roles, responsibilities or levels of trust
- Different degrees of culpability or involvement in the same incident



### Inconsistency Also Creates Discrimination Risk

If those dismissed are disproportionately from a protected group, inconsistency can be evidence of direct or indirect discrimination.

- Protected characteristics include: age, race, sex, disability, religion, sexual orientation
- No qualifying period for discrimination claims, day one exposure
- Compensation for discrimination is uncapped, significantly higher risk than unfair dismissal alone

# Awards, Reductions & Mitigation

Understanding what a tribunal can award, and what can reduce it



# What a tribunal can award, and what can reduce it

## Basic Award

Calculated by reference to age, length of service and weekly pay (capped at the statutory weekly pay limit, which is currently £751).

**Maximum basic award:** £22,530 (up from £21,570)

Similar to a statutory redundancy payment calculation.

## Compensatory Award

Compensates for actual financial loss, lost earnings, benefits, pension. The tribunal asks: what would the employee have earned if fairly dismissed?

### **Capped at the lower of:**

- £123,543 (2025/26)
- 52 weeks' gross pay

# The Three Reductions

## Polkey Reduction

If the employer had a fair reason but a flawed process, the tribunal may reduce the award to reflect the chance that a fair process would have led to the same outcome.

## Contributory Fault

If the employee's own conduct contributed to the dismissal, the tribunal can reduce the award, sometimes significantly.

## Mitigation

Employees must take reasonable steps to find new work. If they don't, the tribunal can reduce compensation from the date they should have found a job.

# What's Changing in 2027?

Here's what you need to know right now.

## The qualifying period: the biggest change in a generation

### NOW | Current Law

Employees need 2 years' continuous employment before they can bring an unfair dismissal claim.

This has historically given employers a window to manage out employees who aren't working out without the full procedural burden of unfair dismissal law.

Many employers have relied on this window particularly during probationary periods to end employment without following a full process.

### SOON | From January 2027

The qualifying period will be reduced to 6 months.

Employees will be able to bring an unfair dismissal claim from **6 months employment**.

This is a fundamental shift. Every dismissal even during probation must now be based on a potentially fair reason and follow a reasonable process.

Liabilities will no longer be limited arising from unfair dismissal.

*THIS EFFECTS YOUR EMPLOYEES THAT YOU HIRE FROM JULY 2027.*

# Probation: the battleground

Probationary periods are becoming one of the most legally significant tools in your people toolkit.

## Review your probation clauses now

Many employment contracts have probation clauses that are vague, poorly drafted or simply don't reflect how the process actually works. Audit them NOW..

## Probation reviews must be meaningful

Regular, documented check-ins during probation will be essential. An informal chat isn't enough. Written feedback, targets and support should be recorded throughout.

## Avoid "automatic" acceptance

It will be crucial for managers to actively pass or fail employees probation and ensure any issues are raised with them.

## Review your probation letters

If there are issues during probation, we advise that you review your letters confirming probation has been passed, clearly caveating any issues that might have arisen, otherwise you risk them being "accepted".

## Probation extensions carry risk

Extending a probation period rather than addressing performance directly can be seen as delay. If you're extending, be clear about what needs to improve and by when.

## Induction and onboarding matter more than ever

A good induction reduces the risk of early-stage performance issues. Employees who are set up to succeed are far less likely to fail, and that's good for everyone.

# They now have **twice as long!**

*The Acas early conciliation deadline is changing from 3 months to 6 months in October 2026.*

## **What this means in practice:**

- Every employee you dismiss now has 6 months to raise a formal claim without it being out of time
- That's a longer window for grievances to build, evidence to be gathered, and solicitors to get involved
- Don't assume time has passed and the risk has gone – it hasn't



*Process well. Document everything. The clock is running for longer than it used to.*

Previously

**3**

months

Now

**6**

months

# Fixed Term Contracts: What changes with a 6-month qualifying period?

## The Challenge

Non-renewal of a fixed-term contract is legally a dismissal.

More employees may acquire unfair dismissal rights after 6 months' service.

Organisations with high volumes of short-term FTCs may find full dismissal processes impractical.

## Practical Approach

Clearly document the business reason for the FTC from the outset.

Give reasonable notice of contract expiry.

Consider whether suitable alternative roles are available.

Record the rationale for non-renewal.

Apply a proportionate process based on the circumstances

*The focus is likely to be on demonstrating a reasonable and proportionate process, rather than conducting a full redundancy exercise for every FTC expiry.*

## What you should be doing now.

The changes are here. The organisations that prepare now will find them manageable. Those that don't will find them expensive.

### Audit your employment contracts

Check your probationary clauses, notice provisions and disciplinary procedures. Are they fit for purpose under the new regime? Many aren't.

### Train your managers

Line managers will be on the front line of these changes. They need to understand what a fair process looks like, and why it matters. Training now is far cheaper than a tribunal later.

### Review your disciplinary and capability policies

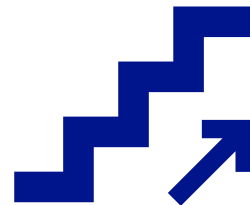
If your policies still reference the two-year rule or are built around the old model, they need updating. A policy that doesn't reflect the law isn't just useless it can be used against you.

### Build better record-keeping habits

Start documenting conversations, reviews and decisions now. Build the culture of record-keeping before you need to rely on it in a tribunal. Good notes save employers every day.

### Take probation seriously from day one

Rethink your induction, onboarding and early-stage management. Regular, honest conversations in the first 4 months will give you the foundation to act if you need to.





# Your takeaways

Leave today with these five things in mind

- 1 Dismissal is not just about the reason, **it's about the process**. A fair reason carried out badly can still be unfair dismissal.
- 2 The two-year qualifying period is going. **Six months will be the new benchmark**. If you haven't started preparing, now is the time.
- 3 Probation needs to become a proper, managed process, not a vague window to **'see how things go'**. Document, review and support from the start.
- 4 **Good record-keeping** is your best defence. If a conversation isn't written down, a tribunal will struggle to give it weight.
- 5 Thrive Law is here to help. Whether it's reviewing your contracts, **training your managers** or supporting you through a dismissal, **you don't have to do this alone**.



# How confident do you feel after this session about the unfair dismissal changes?

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